

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	
NORTHWESTERN CORPORATION,	)	Chapter 11
	)	
Reorganized Debtor.	)	Case No. 03-12872 (JLP)
	)	
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MAGTEN ASSET MANAGEMENT	)	
CORPORATION AND LAW DEBENTURE	)	
TRUST COMPANY OF NEW YORK	)	
	)	
Appellant,	)	
	)	Civil Action No. 05-209-JJF
v.	)	
	)	
NORTHWESTERN CORPORATION, et al.	)	
	)	
Appellees.	)	
	)	

**APPENDIX OF EXHIBITS IN SUPPORT OF  
BRIEF OF APPELLEE, THE PLAN COMMITTEE**

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Dated: August 23, 2005  
New York, New York

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## **EXHIBIT “A”**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Case No. 03-12872 (JLP)  
NORTHWESTERN CORPORATION, . 824 Market Street  
Wilmington, Delaware 19801  
Debtor. . August 10, 2005  
. . . . . 10:30 a.m.

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE HONORABLE JOHN L. PETERSON  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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Audio Operator: Jason Smith

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For the Official Committee of Unsecured Creditors:	Paul, Weiss, Rifkind, Wharton & Garrison LLP By: MARGARET A. PHILLIPS, ESQ. EPHRAIM I. DIAMOND, ESQ. 1285 Avenue of the Americas New York, NY 10019 (Telephonic Appearance)

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1 THE COURT: The number of persons that I think are on  
2 the telephone appearances; Margaret Phillips, from Paul Weiss  
3 and Ephraim Diamond; Paul Weiss. Are they present?

4 MS. PHILLIPS: Yes, Your Honor.

5 MR. DIAMOND: Yes, Your Honor.

6 THE COURT: All right. George Patterson, from  
7 Lowenstein Sandler, AT&T?

8 MR. PATTERSON: Yes, Your Honor.

9 THE COURT: Matthew Troy, from the U.S. State  
10 Department -- or Department of Justice?

11 MR. TROY: Yes, Your Honor.

12 THE COURT: Ryan deFord, from Milbank, Tweed?

13 MR. DeFORD: Yes, Your Honor.

14 THE COURT: And counsel for NorthWestern, Paul  
15 Hastings?

16 MS. CHAYAVADHANANGKUR: Yes, Your Honor.

17 THE COURT: Patrick Coleman?

18 MR. COLEMAN: Yes, Your Honor.

19 THE COURT: Let's have the appearances, then, for  
20 counsel in Wilmington.

21 MR. CHIPMAN: Good morning, Your Honor. William  
22 Chipman; Greenberg Traurig, for the debtor.

23 MR. KAPLAN: Good morning, Your Honor. Gary Kaplan,  
24 from Fried, Frank, on behalf of Magten.

25 MR. DEMMY: Your Honor, John Demmy, of Stevens and

1 Lee, for Richard Hylland.

2 MR. LEVITSKY: Good morning, Your Honor. Neal  
3 Levitsky, from Fox Rothschild, for Merle Lewis.

4 MR. CASARINO: Good morning, Your Honor. Marc  
5 Casarino, from White and Williams, LLP, for National Union Fire  
6 Insurance Company of Pittsburgh, PA.

7 MS. BROWN: Good morning, Your Honor. Amy Brown;  
8 Werb and Sullivan, on behalf of First Interstate Bank and  
9 Mazula (phonetic) Parking Commission.

10 THE COURT: Very well.

11 MR. SUTTY: Good morning, Your Honor. Eric Sutti, of  
12 the Bayard Firm, on behalf of the Plan Committee.

13 MR. BROWN: Good morning, Your Honor. Charles Brown,  
14 from Elzufon Austin, on behalf of AT&T.

15 MR. GELLERT: Good morning, Your Honor. Ronald  
16 Gellert, from Eckert Seamans, on behalf of James Murphy.

17 THE COURT: Counsel, here on --

18 MS. DENNISON: Good morning, Your Honor. Carol  
19 Dennison, on behalf of the debtor.

20 MR. CAPP: Good morning, Your Honor. William Capp  
21 (phonetic), for NorthWestern.

22 MR. KNAPP: Thomas Knapp (phonetic), on behalf of  
23 NorthWestern.

24 THE COURT: Anyone else? I'll take up the matter  
25 dealing with the notice of emergency motion to extend time to

1 present a claim of Patrick Coleman, filed by Patrick Coleman on  
2 August the 8th of '05. Coleman contends that he did not get  
3 timely notice of this proceeding, although I notice that the  
4 proof of mailing that was made by the debtor's counsel shows  
5 that he was on the telecopies that were mailed out on August  
6 the 1st, '05. What's the position of the debtor?

7 MS. DENNISON: Good morning, Your Honor. Carol  
8 Dennison, on behalf of the debtor. It is, in fact, the  
9 debtor's position that Mr. Coleman was properly served with the  
10 agenda at the place of address noticed on his claim form,  
11 consistent with what's reflected on the agenda. When he  
12 advised me -- when I spoke with him -- we also sent him another  
13 copy, at his request. But he was served when everyone else was  
14 served.

15 THE COURT: Mr. Coleman?

16 MR. COLEMAN: Your Honor, I was not served. And this  
17 is not the first time that I was not served by counsel, for  
18 various hearings.

19 THE COURT: Now, what do you want the continuance to  
20 do?

21 MR. COLEMAN: To have witnesses available and to  
22 subpoena records, in order to be available for the hearing,  
23 regarding the claim.

24 THE COURT: Any objection --

25 MS. DENNISON: If I could be heard, Your Honor?

1 THE COURT: Go ahead.

2 MS. DENNISON: This claim objection was filed, Your  
3 Honor, in February -- on February 1st. And there was an  
4 objection deadline, that was shortly thereafter, in March.  
5 This claimant has had almost seven months to conduct discovery,  
6 to the extent that discovery was necessary. The agenda has  
7 carried this from month to month, with the hope that a  
8 settlement could be reached. A settlement offer was made last  
9 week.

10 We also note, for the record, that we're prepared to  
11 proceed today. We have Mr. Roger Shrum in the courtroom, who  
12 can testify as to NorthWestern's position on why this claim  
13 should be disallowed or substantially reduced. We also believe  
14 that the request for 120 day continuance is absurd, in light of  
15 the fact that this has been a pending matter, where there's  
16 clearly a dispute since March. And there's been no effort by  
17 the claimant to seek to do discovery, whether on an informal or  
18 a formal basis.

19 And we'd note for the Court, as the Court is aware,  
20 that this debtor has conducted informal discovery in most  
21 cases, in connection with the claim resolution process. This  
22 is the first that anybody has been advised that this plaintiff  
23 wishes to do discovery. And we don't believe that were the  
24 Court to consider continuing this matter, that a 120 days is  
25 appropriate.

1           Lastly, we would note for the Court that none of the  
2 individuals identified in Mr. Coleman's emergency request for a  
3 continuance are current employees of NorthWestern.  
4 NorthWestern does not have control over and, indeed, cannot  
5 produce any of those individuals. And we'd note for the record  
6 that were that the case, we did make inquiry, to see if there  
7 was some way that we can, perhaps, expedite it. But none of  
8 these witnesses that Mr. Coleman says that he wants to do  
9 discovery on are NorthWestern witnesses.

10           So with that, Your Honor, we think that their request  
11 is untimely. We think that this claimant is a -- based on his  
12 communications with us and the Court -- it's clear that he is a  
13 sophisticated businessperson and understands this process, and  
14 that had he desired to take discovery, that he should have done  
15 so after his objection was filed, rather than sitting on his  
16 rights, letting them lapse until this claim came on for  
17 hearing.

18           So we would ask the Court to deny his motion, in the  
19 first place. But in the second place, we would say that if the  
20 Court is going to consider it, that it be a 30 day extension,  
21 because this claim determination should not be delayed any  
22 further.

23           THE COURT: All right. Mr. Coleman, how about your  
24 response?

25           MR. COLEMAN: I have, through the process of this --

1 with former officers of NorthWestern -- made dozens of calls  
2 regarding the process of this claim. And I, as of last August  
3 -- with Mr. Chipman -- had e-mailed him regarding what the  
4 process was regarding the settlement, and was told that I would  
5 be notified in due time as to the process regarding settlement  
6 conferences.

7           So I have made dozens of calls to counsel to  
8 NorthWestern throughout this process, and would have been happy  
9 if I had been told you may prepare for today, to be exactly  
10 prepared. I have been waiting for almost two years to have had  
11 an opportunity to be available to present, and being notified  
12 five or six days before a hearing that's to take place in  
13 Butte, Montana. It's simply not reasonable.

14           And while it may not need to be 120 days, it would  
15 need to be a minimum of 60 days, in order to gather the  
16 witnesses together to be present. And in terms of what Ms.  
17 Dennison said about settlement, no one from legal counsel on  
18 the debtor's side has called me regarding this matter, until  
19 last Thursday -- ever.

20           THE COURT: What have you been doing to get these  
21 witnesses deposed, since you filed your claim? What do you  
22 think -- you're supposed to assert yourself into this process.  
23 And you've got the right to ask for the depositions. You can  
24 notice them up. It's a contested case. You can utilize the  
25 Federal Rules of Civil Procedure. You haven't done any of

1 that.

2 MR. COLEMAN: I was under the impression that a time  
3 frame for settlement would happen, and that we would be sitting  
4 down -- that they would ask to sit down with us. We would talk  
5 about what was to be stipulated or not stipulated, and at that  
6 point, go through a discovery process. And that's why I had  
7 asked them Monday if they were going to respond in writing, so  
8 I would know what parts of my claim they had the most concerns  
9 with. At this point, I have no idea -- with regard to the  
10 claims -- what their concerns are.

11 THE COURT: It looks like they're concerned with the  
12 whole claim. I'm going to deny your motion to extend the time.  
13 And we'll get to the hearing on it later this morning.

14 The following items on the agenda on claims are  
15 vacated, as the claims have been withdrawn on August the 9th,  
16 2005. Item Number 9, the claim of the Internal Revenue  
17 Service, Claim 1066; Item Number 10, the claim of Nebraska  
18 Department of Revenue, Claim 1001; Item Number 13, the  
19 objection to the claim of Westchester Fire Insurance Company  
20 and other insurance companies, Claims Number 630 and 885; and  
21 Item Number 22, claims of Valerie Bergen, Numbers 549 and 959.

22 Before we get into the rest of the agenda, I am  
23 prepared to rule on the Magten's omnibus objection to the  
24 NorthWestern's motions to settle various claims, pursuant to  
25 Federal Rule of Bankruptcy Procedure 9019. The Plan Committee

1 has filed a reply, resisting NorWest motion -- West objection  
2 -- as has the debtor, NorthWestern. And the Court has read the  
3 replies, and also, Magten's omnibus objection.

4           The omnibus objection of Magten involves the disputed  
5 claims on motions, which are docketed in Numbers 3162, 3163,  
6 3164, 3217, 3219, 3224, 3196, 3197, 3198, 3199, 3208, and 3197.  
7 Added to this -- the agenda calendar -- were the claims  
8 involving Murphy, Hylland, Lewis -- no, Murphy, Lewis and  
9 Charter -- and objections have been filed by Magten to the  
10 latter two claims; Charter and Lewis.

11           This Court has previously stated its position at the  
12 June hearing, relative to Magten's objection. And let me just  
13 refresh that, for the record. On June the 30th, 2005, Magten  
14 objected -- at that time -- objected to certain NorWest  
15 motions, pursuant to -- filed -- pursuant to 9019. The Court  
16 found no merit in Magten's argument, and approved the June 9019  
17 motions at a hearing held on July the 12th, 2005. Magten, once  
18 again, has reviewed the -- renewed -- the same basis for the  
19 objection in the pending motions, with one exception, which  
20 I'll get to later.

21           The Plan Committee is charged with protecting the  
22 interests of NorthWestern's unsecured creditors, during the  
23 final stages of this Chapter 11 case. The primary purpose of  
24 the Plan Committee is to oversee the claims reconciliation and  
25 settlement process. One of those key interests is to ensure



1 that all unsecured creditors receive their rightful recoveries  
2 in a timely manner. The Plan Committee asserts that in filing  
3 its objections -- and this is joined in by NorthWestern --  
4 Magten seeks to prevent both the allowance of the proposed  
5 allowed claims, as well as further distributions from the  
6 disputed claims reserve; matters which fall within the Plan  
7 Committee's review.

8           For example, on June 30th, 2005, the debtor filed  
9 personal injury 9019 motions, seeking this Court's approval of  
10 various settlement agreements, between NorWest -- NorthWestern  
11 -- and the claimants, involving personal injury and wrongful  
12 death claims. On June 21 and 22, 2005, subsequent motions were  
13 filed under Rule 9019 -- which are now set for hearing -- for  
14 approval of various settlements between the claimants and this  
15 disputed claim, involving litigation matters, legal fees, and  
16 employee benefits, as well as a multitude of claims asserted by  
17 former directors and officers. Subsequent to the motion,  
18 additional claims were filed on -- for settlement -- on behalf  
19 of Murphy, Rourke (phonetic), Charter and Lewis.

20           Each of the 9019 motions provide that upon entry of  
21 an order approving such motion, the claimant shall be deemed to  
22 have an allowed claim in the amount set forth in the letter  
23 agreements executed by the claimant's counsel, and would  
24 receive a pro rata share of new common stock on the disputed  
25 claims reserves.

1 By the objections from Magten, Magten states to --  
2 objects to -- the allowance of the proposed allowed claims  
3 filed, on its allegations that the disputed claim reserve was  
4 not sufficiently funded. Magten seeks a stay of the claims  
5 resolution process, and asserts that neither allowance of the  
6 disputed Class 9 claims, nor distribution from the claims  
7 reserve may occur until after its complaint -- filed under  
8 Section 1144 of the Code -- has been fully and finally  
9 resolved. That action has been stayed by prior order of this  
10 Court.

11 In its objections, Magten further argues that the  
12 filing of that complaint under 1144 -- along with  
13 NorthWestern's alleged admissions, respecting the inadequacy of  
14 the disputed claims reserve -- Magten's mischaracterization to  
15 this Court's decision denying the QUIP's 9019 motion should  
16 effectively halt the reorganized debtor's ongoing efforts to  
17 consensually resolve outstanding claims. But contrary to what  
18 Magten contends, the Plan Committee and NorthWestern properly  
19 assert that a halt to the claims process would be inequitable.

20 In laying the foundation for its argument, Magten  
21 relies on what it characterizes as this Court's prior finding  
22 on the disputed claims reserve is insufficient. A review of  
23 the record, however, and my review of the order, reveals that  
24 that reliance is misplaced. First, Magten wholly misconstrues  
25 the Court's decision denying the QUIP's 9019 motion, as lay in

1 support to its argument of being -- the reserve -- being  
2 underfunded. In denying the Court's 9019 motion, the Court  
3 found that the terms of the alleged settlement expressly  
4 violated the terms of the plan, and that Magten's ultimate  
5 proposal raised -- for the first time, I might add, on oral  
6 argument -- to dip into the disputed claims reserve was an  
7 untenable solution.

8           Second, the arguments put forth that the hearing on  
9 the QUIP's 9019 motion did not address the sufficiency of the  
10 claim reserve, per se, and it hasn't been addressed to this  
11 date. Rather, they address NorthWestern's ability to evade the  
12 claims reserve, to afford Magten the economic equivalent of a  
13 quick settlement, to the detriment of the Class 7 creditors.

14           It seems to me to be totally inconsistent for Magten  
15 to say it's okay for it to invade the claims reserve, but  
16 doesn't allow that right to go to the other end -- secure the  
17 claims of the other unsecured creditors. The fact of the  
18 matter is that the disputed claims should be resolved on the  
19 merits, at least to the proposed settlements, under the  
20 standards set forth in Coram Healthcare Corporation, 315 BR  
21 321.

22           I hold that Magten's unsupported allegations, found  
23 in the 1144 complaint, are insufficient to halt NorWest claims  
24 resolution and settlement process. And I might add that that  
25 process has been successful in settling numerous contested

1 claims, well below the amount that the claimants had asserted  
2 were due to them. It is clear that the claim should and must  
3 be settled, to determine whether the disputed claims reserve is  
4 unfunded. To date, there is no such find.

5           Magten asserts that unless NorthWestern agrees to  
6 segregate sufficient common stock from the disputed claims  
7 reserve, to satisfy the full amount of the non-accepting QUIP's  
8 holder's claim, the proposed claims that are now subject to  
9 allowance must not be taken up. I think, significantly, that  
10 Magten demands are contrary to the terms of the stipulation and  
11 order establishing the disputed claims reserve between  
12 Northwest and the QUIP indentured trustee, Law Debenture, which  
13 provides that NorWest has no obligation to replenish the  
14 disputed claims reserve.

15           In the absence of unsupported relief, Magten demands  
16 this Court halt the number of claims that share in that  
17 reserve. I will not do so. Contrary to Magten's assertions,  
18 it would be inequitable to halt the claims resolution process,  
19 pending a resolution of the 1144 proceeding. The Court's stay  
20 of that order makes it clear that the resolution of that  
21 complaint is not right for immediate resolution. It would  
22 severely and inequitably hold up the entire post-confirmation  
23 administration of this estate; a situation clearly created by  
24 Magten's appeal of the order of confirmation of the plan.

25           The plan provides for a clear mechanism for resolving

1 these disputed claims, under Section 7.4 and 7.6. Once  
2 resolved, the plans require NorthWest to make a distribution on  
3 account of such allowed claims, as soon as practical, following  
4 its allowance. Magten's request would indefinitely prohibit  
5 compliance with the confirmed plan.

6           The orders approving the settlements of the former  
7 directors and officers and other personal injury actions at the  
8 -- after the July hearing -- were final and -- or have not been  
9 appealed by Magten. It's clear to me that once I had held that  
10 the -- basically, at the July hearing -- that Magten's delaying  
11 tactics were not meritable -- had no merit -- that now it is  
12 apparent -- and no appeal having been made -- under the law of  
13 the case doctrine, once an issue has been decided, the parties  
14 may not re-litigate that issue in the same case.

15           So I am going to overrule the omnibus objection of  
16 Magten, to the continuance of this hearing, relative to the  
17 settlement of the number of security claims which we have  
18 before the Court today.

19           I might further state that Magten's latest objection  
20 -- filed yesterday -- objects to the hearing of the Lewis and  
21 Charter claims, due to the lack of the 20 day notice. But it  
22 concedes that the Court can cause -- may shorten the time. I  
23 think the cause exists to conclude those litigation matters, as  
24 well, as they have been pending for months. And certainly,  
25 Magten had got an opportunity to determine the merits of the

1 litigation during the period of time.

2 I have to reiterate that compromise is generally  
3 favored in bankruptcy. A consensual resolution of claims  
4 minimizes litigation and expedites the administration of the  
5 bankruptcy estate. Under Rule 9019 of the Federal Rules of  
6 Bankruptcy Procedures, the approval of a compromised settlement  
7 is well within the sound discretion of the Court. In approving  
8 the settlement, the Court should not have to be content with  
9 the settlement as the best possible compromise. Rather, the  
10 Court must only conclude that the compromise of settlement  
11 falls within the reasonable range of litigation possibilities.  
12 Restated, that is, the settlement need only be above the lowest  
13 point of a range of reasonableness.

14 In determining whether to approve the settlement, the  
15 bankruptcy court should consider the probability of success of  
16 a litigation -- underlying litigation -- the complexity of the  
17 extents and delay involved, the possibility of possible  
18 difficulties in administering the estate in the paramount  
19 interest of the creditors. Additionally, the Court should  
20 defer to the debtor's judgment, so long as there are legitimate  
21 business justifications to the action. And I must also defer  
22 and give credit to the position taken by the Plan Committee,  
23 relative to the settlement on the merits of each of these  
24 claims.

25 And therefore, we're going to proceed to hear the

1 calendar, relative to these 9019 motions, and decide them in an  
2 appropriate manner.

3 MR. KAPLAN: Your Honor, can I be heard? It's Gary  
4 Kaplan, from Fried Frank, on behalf of Magten.

5 THE COURT: You may, sir.

6 MR. KAPLAN: Thank you, Your Honor. Your Honor, I'm  
7 not going to reargue points that -- I understand Your Honor's  
8 decision fairly clearly. But, you know, I do think that there  
9 is a simple way to avoid Magten being required to continue  
10 objecting -- to continue to raise its point -- so that we don't  
11 get to a point, at the end of the day, when our claim is  
12 ultimately allowed and everybody turns around and says, sorry.  
13 There's no stop left for you guys, because the reserve has been  
14 totally wiped out. And then somebody looks at us and says,  
15 well, where were you when all these claims were being allowed  
16 in the process?

17 And I think, very simply, Your Honor, what we would  
18 be looking for would be both the debtor and the Plan Committee  
19 -- who I understand Your Honor is giving significant deference  
20 to -- what we would like from them is a representation;  
21 whenever they are seeking this Court's allowance of claims,  
22 that they represent to the Court that the disputed claims  
23 reserve is sufficiently funded, so that it ultimately, all  
24 disputed claims are allowed; that they will receive the full  
25 distribution to which they're entitled to under the plan,



1 approximately 63 percent recovery.

2           If they cannot stand up today, Your Honor, and say  
3 that it is indeed funded; that all other claimants are not  
4 being harmed by allowance of these claims -- I don't  
5 understand; (1) how we can be giving any deference to what the  
6 Plan Committee is saying, if they haven't investigated that and  
7 they can't say, then, that they are looking out for the  
8 interest of all of the disputed claimants. And that's a  
9 fundamental thing. And it should be very easy for them to  
10 stand up and say -- and likewise, for the debtor to be allowing  
11 claims, but not have conducted the analysis -- to be able to  
12 stand up here today and to affirmatively represent that there  
13 is sufficient stock.

14           And once they do that, Your Honor, I think much of  
15 our future objections and our need for future objections will  
16 go away, if we get those representations. And so, I would ask  
17 that Your Honor request -- from both of those parties -- that  
18 they do make the representation, so when the Court looks at the  
19 settlements; looks at not only what is its impact on Magten,  
20 but what is the impact on all of the other unsecured creditors  
21 with disputed claims?

22           Because if right now, the debtor can't say all the  
23 other claimants out there with disputed claims will receive the  
24 same recovery as those people who are being allowed today, then  
25 there's a serious problem. And it does need to be looked at.



1 And I think the Plan Committee and the debtor need to explain  
2 to this Court how it is that they are seeking to allow claims,  
3 without being able to make that representation.

4 THE COURT: Would you accept a quid pro quo for that?  
5 If, in fact, in the future, relative to these disputed claims,  
6 in order to avoid your objection and misrepresentation is made,  
7 would you then withdraw your 1144 complaint?

8 MR. KAPLAN: We -- I'd have to confer with the  
9 client. But we will -- if we get a representation that we are  
10 comfortable with, I would have to talk to the client. But  
11 that's a possibility. But I can't say that, without talking to  
12 the client.

13 THE COURT: All right. Then I'll take your  
14 suggestion under advisement. And you can consult with your  
15 client. And NorthWest and the Plan Committee can consult among  
16 themselves, relative to your proposal. Thank you, counsel.

17 MR. KAPLAN: Thank you, Your Honor.

18 THE DEPUTY: Excuse me, Judge. This is Nancy. Is  
19 there anyone who could adjust your camera? We can't see you,  
20 at all, here.

21 THE COURT: You can't see me?

22 THE DEPUTY: We can't see you. We can see Ms.  
23 Dennison. We see the top of your head, but that's all.

24 THE COURT: That's enough.

25 THE DEPUTY: No, it's not.

1 THE COURT: Hold on. We're going to get it adjusted  
2 right now, Nancy.

3 THE DEPUTY: Thank you.

4 THE COURT: Now do you see that handsome face?

5 THE DEPUTY: Not yet.

6 THE COURT: All right.

7 THE DEPUTY: Still waiting. Now we see nobody.  
8 There you go. Thank you.

9 THE COURT: All right. Counsel, you may proceed with  
10 the agenda, Ms. --

11 MS. DENNISON: Thank you, Your Honor. Let's turn to  
12 agenda Item Number 1. This is the motion for order declaring  
13 the automatic stay to be inapplicable with the modification of  
14 automatic stay, to permit prosecution and payment of Worker's  
15 Compensation claim filed by Herman Gonzalez, et al. I'd ask  
16 the Court if we could also address Item Number 15 at the same  
17 time, because this is the motion to approve the settlement,  
18 with what the debtor has been referring to as the Gonzalez  
19 claimants.

20 This settlement -- this matter Number 15 - is the  
21 motion to approve the stipulation between NorthWestern  
22 Corporation and the Gonzalez claimants. It has been on file  
23 since June 29th. And the settlement itself, will resolve Items  
24 1, 2, and 5 on this agenda. There were no responses received  
25 to the settlement stipulation and the 9019 motion. Just for

1 the Court's edification, a quick review of this settlement  
2 involves the settlement of Worker's Compensation claims by the  
3 use of applicable insurance policies and is the result of a  
4 fairly lengthy settlement process, during which discovery was  
5 taken. And the parties spent a fairly significant amount of  
6 time negotiating the terms of the stipulation that we seek  
7 approval of here today.

8 THE COURT: All right. We'll take up Item 15, no  
9 objections having been filed and no responses to the order.  
10 The Court will enter an order, pursuant to Rule 9019, approving  
11 the stipulation between NorthWestern Corporation and Herman  
12 Gonzalez, Ron Lyon (phonetic), Ken Lagato (phonetic), and other  
13 similarly situated putative class action claims.

14 MS. DENNISON: Thank you, Your Honor. If the Court  
15 would prefer, given the number of orders that we would like to  
16 submit today, if I could hand them up at the end of the  
17 hearing?

18 THE COURT: Hand them up at the -- all at the end.

19 MS. DENNISON: Thank you, Your Honor. And I think  
20 there is counsel at the podium in Delaware.

21 MS. VELDHUIS: Just in case the Judge had any  
22 questions. This is Hillary Veldhuis; Lyons, Doughty and  
23 Veldhuis, counsel for the plaintiffs on Number 15.

24 MS. DENNISON: Okay. With that, Your Honor, I  
25 believe that disposes of items on the agenda, Number 1, Number

1 2, Number 5, and Number 15.

2 THE COURT: All right.

3 MS. DENNISON: Turning to Item Number 3, this is the  
4 motion to approve the memorandum of understanding. This  
5 involves the McGreevey (phonetic) litigation and related  
6 matter, through Touch America. The debtor is seeking to  
7 continue this to the next omnibus hearing.

8 THE COURT: On the -- is that on the Milbank Tweed  
9 settlement?

10 MS. DENNISON: No, Your Honor. This is with the --  
11 this is with Goldman Sachs and Milbank Tweed. But the Milbank  
12 Tweed settlement, we'll settle out --

13 THE COURT: All right. That will be rescheduled.

14 MS. DENNISON: Thank you, Your Honor. Item Number 4  
15 is the omnibus motion for court approval to assume certain  
16 executory contracts. We are seeking to continue this, just as  
17 a status report, Your Honor. The SAP parties are exchanging  
18 signature pages to an assumption and assignment agreement. And  
19 that matter should be resolved shortly, as to Veritas. And  
20 Veritas are marking up -- are working on -- identifying all of  
21 the contracts to be assumed.

22 We would ask this matter be continued one final time,  
23 to the next omnibus hearing, and if not resolved at that time,  
24 to take it up for a hearing.

25 THE COURT: Very well. Motion is granted.

26

1 MS. DENNISON: Thank you, Your Honor. Item Number 5  
2 has been addressed. That is the Gonzalez matter. Number 6 is  
3 the thirteen omnibus objections to certain Expanet's claims,  
4 pursuant to 11 U.S.C. 502(b). These are claims that involve  
5 certain shareholders of Expanet's, that filed a claim in the  
6 NorthWestern case. And we would ask that that matter be  
7 continued to the next omnibus hearing. This matter is the  
8 subject of settlement discussions and is going to require  
9 coordination, as to the settlement between the NorthWestern, in  
10 that exit case.

11 THE COURT: Motion is granted, and it be settled.

12 MS. DENNISON: Thank you, Your Honor. The next item  
13 is matter Number -- is the debtor's protective objection to  
14 Claim Number 707. This is a security class action claim, that  
15 is the subject of a settlement. The reason we are carrying  
16 this is it's pending the appeal of the memorandum of  
17 understanding order, and would ask that this be continued.

18 THE COURT: Granted.

19 MS. DENNISON: Thank you, Your Honor. Matter Number  
20 8 is the objection to Claims Number 571 and 1083, filed by  
21 Touch America. This involves certain claims, filed by Touch  
22 America, the debtors -- in the debtor's case. We are in the  
23 process of tight working with Touch America regarding claim  
24 resolution, and would ask that this be continued --

25 THE COURT: It will be continued.

27

1 MS. DENNISON: -- to the next omnibus hearing. Thank  
2 you. I didn't hear that. Item Numbers 9 and 10 have been  
3 vacated. Number 11 is the objection to Claim Number 312, of  
4 Milbank, Tweed, Hadley and McCoy's claim. The objection has  
5 been resolved, pursuant to the settlement. And the settlement  
6 motion is reflected as Item Number 28, Your Honor. And if we  
7 could take Matter Number 28 up at this time?

8 THE COURT: You may proceed with Item 28.

9 MS. DENNISON: Thank you, Your Honor. The debtor's  
10 motion for -- this is the debtor's motion for order, pursuant  
11 to Bankruptcy Rule 9019, approving the settlement agreement  
12 between NorthWestern Corporation and Milbank Tweed. This was a  
13 claim that was filed by Milbank Tweed, for the delivery of  
14 certain legal services. And it was the subject of the dispute,  
15 both as to the -- to which party the services were delivered.  
16 After negotiation between the parties, it was agreed to settle  
17 the claim for \$55,493.97 in allowed claim. The only objection  
18 has been overruled, and that was the objection filed by Magten.  
19 And the debtor would request approval of the settlement at this  
20 time.

21 THE COURT: No objection to the merits of the  
22 settlement, having been presented. The debtor's motion for an  
23 order approving the 9019 settlement with Milbank, Tweed,  
24 Hadley, and McCoy is granted.

25 MS. DENNISON: Thank you, Your Honor. Matter Number

1 12, Your Honor, is the objection to Claim 20, of Hartford Life.  
2 And they have withdrawn that claim. And I believe that will  
3 hit the docket shortly, Your Honor.

4 THE COURT: Very well.

5 MS. DENNISON: Matter Number 13 is the -- is a matter  
6 that has been vacated by the Court, based on a plan withdrawal.  
7 And Matter Number 14, Your Honor, is the motion to compel  
8 master ballot agents to comply with the order granting debtor's  
9 motion for order compelling master ballot agents to identify  
10 holders of Classes 7, 8(a) and 8(b), in claims that voted  
11 against releases and disclosed beneficial holders of Class  
12 8(b).

13 Your Honor, there have been no objections filed to  
14 this. But so that our record is clear, I would like to call  
15 Lori Sullivan, to provide brief testimony as to what has been  
16 done to try to avoid the necessity of seeking a contempt order  
17 and to make clear that the parties involved in the case have  
18 heard what the debtor has done to address the need for  
19 additional information on the beneficial holders.

20 THE COURT: You may proceed.

21 MS. DENNISON: Thank you, Your Honor. At this time,  
22 I call Rory Sullivan.

23 MR. SNELLINGS: Your Honor, this is John Snellings,  
24 of Nixon Peabody. I represent Law Debenture, the Trustee --  
25 the indenture trustee to the QUIPs. After this testimony, if I

1 could just have a moment, with regard to this particular  
2 motion? I would appreciate it.

3 THE COURT: No problem, counsel.

4 MR. SNELLINGS: Thank you, very much.

5 THE COURT: If you have any questions of the witness,  
6 you may examine the witness and then make your statement.

7 MR. SNELLINGS: Thank you, Your Honor.

8 THE COURT: All right.

9 MS. DENNISON: Please state your name for -- do we  
10 want to swear the witness, Your Honor?

11 THE COURT: Please raise your right hand.

12 RORY SULLIVAN, DEBTOR'S WITNESS, SWORN

13 THE COURT: State your name, address, business or  
14 profession or occupation.

15 THE WITNESS: My name is Rory Sullivan. I'm with  
16 Bonds Holder Communications Group. I am currently a vice  
17 president.

18 DIRECT EXAMINATION

19 BY MS. DENNISON:

20 Q Mr. Sullivan, can you tell me what your role is, or  
21 describe your job at Bondholder Communications?

22 A Bonds Holder Communications Group is a tabulation and  
23 information agent, which assists debtors and plan committees or  
24 any -- in any way that we might be needed.

25 Q Okay. And in what ways? Can you just give the Court a



Sullivan - Direct/Dennison

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1 specific description of the kind of work that you do for --

2 A Sure. We do collection of votes, regarding bankruptcies,  
3 such as this one. We identify beneficial bonds holders. We  
4 also act as an exchange or tender agent, in those types of  
5 transactions.

6 Q And does that involve communications with the Depository  
7 Trust Company?

8 A Yes. It involves frequent communications.

9 Q Which we refer to as DTC?

10 A Correct.

11 Q How did BCG -- well, first of all, let me strike that.  
12 How long have you worked for BCG?

13 A Since June, 2003.

14 Q All right. And when did BCG first become involved in the  
15 NorthWestern case?

16 A In August, 2004. Kurtzman Carson Consultants engaged  
17 Bonds Holder Communication Group.

18 Q In connection with what activity?

19 A With the re-solicitation for NorthWestern.

20 Q And that would be in connection with the second amended  
21 plan of disclosure statement?

22 A Correct.

23 Q And what was -- what, specifically, was BCG asked to do?

24 A We were asked to tabulate the votes of the master ballot  
25 agents.

Sullivan - Direct/Dennison

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1 Q And where did that information go, once you had tabulated  
2 the master ballot agent -- master -- yes, master ballot agent  
3 vote?

4 A It was certified by us, and presented to the Court, I  
5 believe.

6 Q Okay. And that went up through KCC or Kurtzman Carson's  
7 certification, correct?

8 A Correct.

9 Q In connection with this motion that we're here on today,  
10 what has been BCG's involvement?

11 A BCG, in early 2005, was involved in input into the motion  
12 for the order to the Court, to have master ballot agents  
13 release beneficial holder information, as requested by Law  
14 Debenture.

15 Q Okay. There was also a request for the debtor, was there  
16 not?

17 A Yes, there was.

18 Q And what was the debtor's request?

19 A To go to the master ballot agents and attempt to identify  
20 the beneficial owners of those parties who did not release the  
21 company.

22 Q Okay. And what process or what information was requested?

23 A The account number of the beneficial owner, the beneficial  
24 owner's name, address, and share amount, and whether or not  
25 they held, as of October 20th, 2004.

Sullivan - Direct/Dennison

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1 Q Thank you.

2 MS. DENNISON: Your Honor, if I could approach the  
3 witness? I'd like to mark, as Exhibit A, the affidavit that  
4 Mr. Sullivan submitted in support of this motion, so that he  
5 can have that information to testify from.

6 THE COURT: All right. You may proceed.

7 MS. DENNISON: Thank you.

8 THE COURT: That was on --

9 MS. DENNISON: Yes.

10 Q Mr. Sullivan, can you tell me what document I've just  
11 handed you?

12 A You've handed me an affidavit, signed by myself, to -- in  
13 support of a motion to compel; (a) master ballot agents to  
14 comply with order granting debtor's motion for order compelling  
15 master ballot agents to; (1) identify holders of Classes 7,  
16 8(a) and 8(b) claims, and whether such holder elected Option 1  
17 or Option 2, and (b) seeking attorney's fees and costs.

18 Q With regard to the activity by BCG, in connection with the  
19 information provided in this affidavit -- well, first of all,  
20 can you tell me, is that your signature at the end of the  
21 exhibit, on Page 5?

22 A Yes, it is.

23 Q With regard to the information collected, what did  
24 Bondholder Communications actually do to gather the information  
25 that you provide in this affidavit?

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1 A We initially served each master ballot agent with a copy  
2 of the motion. That was to -- and, I guess, to provide a  
3 sufficient time for any master ballot agent to object to the  
4 motion. Upon confirmation of the order, it was once again  
5 served to them. And just to backtrack, we -- in each  
6 circumstance, when the motion was filed -- when the motion was  
7 supplied to the master ballot agents, Bonds Holder  
8 Communications Group reached out by phone, to confirm receipt  
9 of that motion to each master ballot agent.

10 Q Okay. So in connection with the filing of the initial  
11 motion, seeking the additional information that both Law  
12 Debenture and the debtor requested, you contacted the master  
13 ballot agents?

14 A Correct.

15 Q Okay. In connection with when the order was entered,  
16 which was on April 5th, 2005, did you again communicate with  
17 the master ballot agents?

18 A Yes, we did.

19 Q Okay. And then, when -- what went on, after the initial  
20 order was entered?

21 A We were in frequent communication with the master ballot  
22 agents to, you know, discuss the format of them submitting the  
23 information that was requested by the Court and to answer any  
24 questions, or anything like that that they may have had.

25 Q And what level of compliance did you receive?

Sullivan - Direct/Dennison

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1 A Upon the initial order, that was granted by the Court in  
2 April, we've had approximately -- I would say two-thirds of the  
3 master balloting agents provided the information requested.

4 Q And that was after BCG making phone calls, answering  
5 questions, and communicating with those non-complying master  
6 ballot agents?

7 A That's correct.

8 Q In June, a motion to compel was filed. And that's the  
9 motion we're here on today. Are you familiar with that motion?

10 A Yes, I am.

11 Q Okay. In connection with preparation for this hearing on  
12 contempt of the Court's order, what activities did BCG  
13 undertake?

14 A BCG, once again, contacted any of the non-complying master  
15 ballot agents. And basically, we emphasized the urgency of  
16 this, and explained to them, you know, that they would be held  
17 accountable for failure to provide this information. And in  
18 addition to contacting the clerks of -- which are in the  
19 reorganization departments of these master ballot agents, who  
20 would provide us information -- in certain cases, we also  
21 contacted the legal counsel's office of these non-complying  
22 master ballot agents.

23 Q And did someone from BCG -- you, or one of the people you  
24 supervise -- contact every non-complying master ballot agent,  
25 clerk, and general counsel's office?

Sullivan - Direct/Dennison

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1 A Yes. They were either left a message or in some way, they  
2 were tried to be contacted on a number of occasions.

3 Q Okay. With regard to the first component -- the identity  
4 of the beneficial holder information, requested by Law  
5 Debenture -- what is the status of compliance today?

6 A There is only one master ballot agent who has not provided  
7 the information requested.

8 Q And who is that, or what entity is that?

9 A It's DTC -- it's Number 976, Mercantile Safe Deposit and  
10 Trust.

11 Q Okay. And did you prepare a report, summarizing the  
12 information requested -- in terms of the beneficial holder  
13 identification -- by account number?

14 A Yes, we did.

15 Q Okay. And has that been prepared in a form that it can be  
16 provided to Law Debenture?

17 A Yes, it has.

18 Q Okay. And you have that both in electronic format and  
19 hard copy?

20 A Yes, I -- we do.

21 Q Okay. And has any further contact -- has anybody heard  
22 anything from Mercantile Safe Deposit and Trust since the last  
23 communications you made, prior to this hearing?

24 A To my knowledge, no.

25 Q With regard to the compliance with information requested

Sullivan - Direct/Dennison

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1 by the debtor, the identity of the non-releasing parties for  
2 Classes 7, 8(a) and 8(b), what is the status of non-compliance  
3 at this time?

4 A There are still a number of master ballot agents who were  
5 unable to provide us with the beneficial -- or did not provide  
6 us with the beneficial information.

7 Q And those master ballot agents are identified on Page 4 of  
8 your affidavit?

9 A Yes, they are.

10 Q Okay. And for the record, would that be UBS Paine Webber?

11 A Correct.

12 Q Scott Trade?

13 A Yes.

14 Q Wells Fargo?

15 A Yes.

16 Q American Enterprise Investment?

17 A Yes.

18 Q Persian (phonetic) Securities?

19 A Yes.

20 Q J.P. Morgan?

21 A Yes.

22 Q Bank of New York?

23 A Yes.

24 Q Mercantile Safe and Deposit Trust?

25 A Yes.

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1 Q And Bear Sterns?

2 A Yes.

3 Q Okay. And aside from that, you have compliance from all  
4 of the other master ballot agents?

5 A Yes, we do.

6 Q Okay. As you sit here today, is there any reason why  
7 distribution could not immediately take place to the 8(b)  
8 Option 1 QUIP holders?

9 A No.

10 Q When was the earliest that distribution could have taken  
11 place to the 8(b) Option 1 QUIP holders?

12 A Upon certification of our tabulation report.

13 Q And when was that report certified?

14 A I believe it was October, 2004.

15 Q Okay. And in connection with that report, how would that  
16 distribution have worked?

17 A In connection with the report, the shares would have been  
18 delivered to the Depository Trust Company -- DTC. And DTC  
19 would have then taken the instructions from the tabulation  
20 report and distributed it to the master balloting agents. And  
21 from there, the master balloting agents would hold the  
22 responsibility of distributing the shares to its underlying  
23 beneficial holders.

24 Q So the identity of the beneficial holders, in terms of  
25 actually getting the distribution into the right hands, would



Sullivan - Direct/Dennison

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1 have been done by whom?

2 A It would have been done by the master balloting agents.

3 Q And they have the responsibility for knowing who  
4 beneficial holders are?

5 A Yes, they do. They would be their clients.

6 Q One last question, Mr. Sullivan. Who is paying the  
7 expenses -- BCG's expenses?

8 A The debtor, NorthWestern.

9 Q Thank you.

10 MS. DENNISON: Your Honor, at this time, I would ask  
11 for a contempt order as to those individuals that are  
12 identified in Mr. Sullivan's affidavit that have not complied  
13 -- the one non-complying master ballot agent on 8(b) Option 1,  
14 for beneficial holders, which is Mercantile -- and then the  
15 remaining list, for the non-releasing parties. And we would  
16 continue to work with -- upon receipt of that order -- continue  
17 to work with BCG, to obtain the additional information.

18 THE COURT: How much expense have you incurred to get  
19 to these occupying agents?

20 THE WITNESS: How much expenses?

21 THE COURT: How much expense have you incurred, with  
22 respect to the non-complying agents?

23 THE WITNESS: I would say between -- it's hard for me  
24 to give an estimate. I would say maybe between \$20 and  
25 \$50,000.

Sullivan - Cross/Snellings

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1 THE COURT: How much?

2 THE WITNESS: Between \$20 and \$50,000.

3 THE COURT: Any other questions?

4 MS. DENNISON: No, Your Honor. I have no further  
5 questions.

6 THE COURT: Okay. You may step down.

7 THE WITNESS: Okay. Thank you.

8 MR. SNELLINGS: Your Honor, John Snellings. I just  
9 have a few questions.

10 THE COURT: You have a question? All right. Let me  
11 get out of your way.

12 MR. SNELLINGS: Thank you.

13 THE COURT: Go ahead, sir.

14 CROSS EXAMINATION

15 BY MR. SNELLINGS:

16 Q Mr. Sullivan, my name is John Snellings. I represent Law  
17 Debenture. And you know, I just want to state first that Law  
18 Debenture certainly supports everything that Bondholders  
19 Communication Group has been doing to assist Law Debenture and  
20 the debtor, in attempting to identify the present holders of --  
21 those who chose Option 1 under the plan. I guess I'm a little  
22 confused by your last statements in your testimony, is that you  
23 had stated that a distribution could have been made back on  
24 October 24th, 2004. If that is so, what has changed between  
25 October 24th and today, that wouldn't allow such a distribution

Sullivan - Cross/Snellings

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1 to be made, under the process that you described in your  
2 testimony?

3 A The only difference between October 24th, 2004 and today  
4 is that the -- those people who submitted a vote to their  
5 master balloting agent -- instead of knowing the account  
6 number, we know their name, address and, you know, their  
7 personal information.

8 Q Okay. So the -- so you're saying that the information  
9 that the master ballot agent should have had on October 24th,  
10 you now have? And this is the process that we've been going  
11 through for the last several months?

12 A Correct.

13 Q Okay. Now, the voting on the plan occurred on May 26th,  
14 2004, correct?

15 A Uh-hum.

16 MS. DENNISON: Your Honor, I have to object. That's  
17 not correct. The voting on the plan didn't occur in May.

18 THE COURT: All right. We'll correct that date.

19 MR. SNELLINGS: Okay.

20 THE COURT: Go ahead, counsel.

21 Q And with regard to the distribution record dates, that was  
22 October 20th, 2004, is that correct?

23 A Yes, it is.

24 Q Okay. And in the period of time between the voting for  
25 the plan and the distribution record date, could individual

Sullivan - Cross/Snellings

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1 holders, who voted for Option 1, continue to trade on their  
2 QUIPs, do you know?

3 A I'm assuming that they could. I -- that would depend on  
4 their brokerage firm, whether or not they would allow such  
5 trading to occur.

6 Q And do you know -- or do you have any knowledge of how  
7 many QUIPs were traded during that period?

8 A No, I do not.

9 Q Do you know how many people, who chose Option 1 in their  
10 vote, possibly traded their QUIP share during that period?

11 A No, I do not.

12 Q Do you know if there is any mechanism, whatsoever, set up  
13 by the debtor, pursuant to the plan and -- that would require  
14 the master ballot agents to track who was holding as of the  
15 voting date and to whom they sold it to?

16 A No, I do not.

17 Q Okay. So if there are holders out there with QUIPs, who  
18 voted for Option 1 and then sold their shares at some later  
19 date before October 20th, how can we be assured that the person  
20 who is now holding the QUIP share -- as of October 20th --  
21 actually voted for the plan, and that they have knowledge as to  
22 who their previous owner -- what they had voted for the plan?

23 A It's common practice, within the industry, that the master  
24 ballot agents are to sort that out. It's shares typically  
25 delivered to the Depository Trust Company. And from there, as

Sullivan - Cross/Snellings

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1 to how people vote and the trading, that responsibility all  
2 falls upon the shoulders of the master balloting agents.

3 Q Do you have a general number of how many QUIPs Option 1  
4 holders have been identified in your reports?

5 A Do I have a general number?

6 Q Yes. Or even a specific number.

7 A I know that the -- I mean, except for that one firm -- the  
8 majority of the beneficial holders have been identified.

9 Q If I recall, in the certification of voting, there was  
10 631,622 QUIP shares that chose Option 1. Is that number  
11 correct, if you recall?

12 A I would have to see a copy of the certification. I mean,  
13 I can't recall that off the top of my head.

14 Q Okay. So with regard to this report that you provided us,  
15 how many holders -- how many shares, in the hands of holders  
16 who took Option 1, have been identified to date?

17 A 118,000 shares and change can be distributed as of today.

18 Q And that's how much can be -- new stock to be distributed.  
19 I was interested in how many shares of -- how many QUIP shares  
20 have been identified, out of the 631,000 that voted in favor of  
21 the plan.

22 A I don't have a total number in front of me right now.  
23 Based on the count numbers that were listed on the master  
24 ballots and upon receipt of the information requested by the  
25 Court, we were able to match up virtually all of the beneficial

Sullivan - Cross/Snellings

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1 holders and the share amounts.

2 Q In the report that was provided to Law Debenture, it  
3 indicated that there are 440,000 shares that have been  
4 identified, about 70 percent of the outstanding total that  
5 voted for the plan. Does that sound correct to you?

6 A I mean, once again, these numbers -- I mean, I don't have  
7 it in front of me. I cannot give -- you know, confirm or deny  
8 that that is the number. I just know what's in our report is  
9 accurate.

10 Q Okay.

11 MR. SNELLINGS: I have no further questions, Your  
12 Honor.

13 MS. DENNISON: Your Honor, I have one question on  
14 redirect.

15 THE COURT: You may.

16 REDIRECT EXAMINATION

17 BY MS. DENNISON:

18 Q Mr. Sullivan, in connection with the -- you testified as  
19 to, I guess, the ordinary course for the master ballot agents.

20 A Yes.

21 Q In terms of the questions that Mr. Snellings was asking  
22 you, about the identification of the beneficial holders --

23 A Uh-hum.

24 Q -- based on your work in the industry for Bondholder  
25 Communication --

Sullivan - Redirect/Dennison

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1 A Yes.

2 Q -- are all of those things something the master ballot  
3 agent would have the responsibility for determining?

4 A Yes.

5 Q In connection with -- and specifically, in connection with  
6 any trading that took place in between the entry of the  
7 confirmation order and the record date?

8 A Yes.

9 Q That was something that the master ballot agents are  
10 required to track?

11 A Yes.

12 Q And with regard to any trading that took place after the  
13 record date, that again is something the master ballot agents  
14 are required to -- or in the ordinary course -- track?

15 A Yes.

16 Q Have you ever seen a circumstance, since you've been at  
17 Bondholder Communications, where the master ballots agents  
18 didn't conform with or comply with this industry standard?

19 A No.

20 MS. DENNISON: Thank you, Your Honor. I have no  
21 further questions.

22 THE COURT: Mr. Snellings, do you have any other  
23 comments?

24 MR. SNELLINGS: Yes, Your Honor. You can certainly  
25 excuse this witness. He doesn't have to sit there while I

1 talk.

2 THE COURT: Mr. Sullivan?

3 THE WITNESS: Okay. Thank you.

4 THE COURT: Go ahead, sir.

5 MR. SNELLINGS: Thank you, Your Honor. Again, Law  
6 Debenture certainly supports the debtor's efforts to identify  
7 the Option 1 and Option 2 holders, in order to enable us --  
8 whether it be Law Debenture, DTC, or the debtor -- to  
9 distribute to Option 1 holders the common shares warrants, that  
10 the debtor has provided for under the plan.

11 We informed the debtor, in the first week of January,  
12 that Law Debenture was prepared to transfer the stock and  
13 warrants received under the plan -- for the benefit of Option 1  
14 -- back to the debtor, after reserving for the charging lien,  
15 in order to effectuate a distribution to the Option 1 holders.  
16 We remain prepared to transfer the stock and warrants since  
17 that date.

18 In January, we requested information necessary to  
19 make the transfer. It was a simple request. Who are the  
20 QUIP's holders, who are entitled to the recovery set forth  
21 under Option 1 of the plan? We wanted the names, addresses,  
22 and Social Security numbers.

23 We have only one holder listed on our register, and  
24 that's DTC. However, there are 71 financial institutions who  
25 hold the QUIPs, according to the records of the GTC. These



1 financial institutions; each, in turn, hold for individuals,  
2 trusts, corporations, and the like, through brokerage accounts  
3 at their various institutions. We refer to these individuals  
4 and trusts as the beneficial holders. The number of beneficial  
5 holders represented by one financial institution ranges from  
6 one to hundreds. Therefore, there are thousands of beneficial  
7 holders.

8           The parties in this proceeding are aware of the  
9 objections that Law Debenture raised to the plan at the time of  
10 the disclosure statement and plan confirmation, regarding the  
11 mechanisms that were or were not put in place, with regard to  
12 keep (sic) the information regarding the identity of the QUIP's  
13 holders who were given the choice of Option 1 or 2. We raised  
14 the objection that the debtor had not put in place proper  
15 procedures for tracking the ownership of the QUIPs, based on  
16 the votes cast by the holders. We advocated that a claims  
17 register be put in place, that would require holders to  
18 identify themselves, turn in their securities, and vote their  
19 claim as -- and recorded that on the claims register. Any  
20 further trading of the QUIPs would have been reflected by the  
21 transfer of the claims on that register.

22           Other options available to the debtor might have  
23 included requiring the DTC and its participant financial  
24 institutions to each put such a register in place; putting the  
25 burden on them of tracking and recording votes and requiring

1 that a legend be placed on all the securities, recording the  
2 vote of its owner, so any subsequent owners would know where  
3 they stand, with regard to Option 1 and Option 2. None of  
4 these procedures were put in place by the debtor. And that's  
5 why we're here today.

6 As I stated before, you know, the voting record was  
7 -- of the plan -- was in, I believe, May 26th. It seems like  
8 there's another date. The distribution record was October  
9 20th. The problem lies in the fact that many holders cast  
10 their vote and then sold their shares, or bought more shares on  
11 the open market. Those shares, in the hands of a new owner,  
12 have no notation or legend on them, to denote whether the vote  
13 cast was for Option 1 or Option 2.

14 In June, the debtor provided us with the preliminary  
15 results of Bondholders Communication Group, with regard to the  
16 identity of Option 1 holders to date. We spent hours poring  
17 over this information provided by the debtor. Some of our  
18 worst fears have been realized. Out of the 79 financial  
19 institutions, all but four have responded to the request for  
20 information. And now -- from the testimony -- it seems like  
21 all but one, which is a good step forward.

22 Of the 79, however, 20 financial institutions -- in  
23 the report that we have received -- still have not provided no  
24 information regarding whether their holders voted for Option 1  
25 or Option 2. Some of these 20 represent the largest QUIP's

1 holdings. In addition, it is apparent that thousands of shares  
2 changed hands. Many institutions reported large swings in  
3 holdings, between the voting record date and the distribution  
4 record date. But of course, none of the institutions have  
5 provided any explanation or any information as to the trading  
6 of the shares, because they were never asked to track that  
7 information. It has been testified here today that that is  
8 usually a procedure of these institutions. But since they have  
9 not provided that information, I'm not quite sure whether or  
10 not that is an industry standard.

11           We have grave reservations about whether complete  
12 information will ever be available. Our goal, though, is to  
13 commence a distribution as quickly as possible to those Option  
14 1 holders who have been identified. And as I stated before,  
15 out of the 631,000 QUIP shares attributed to Option 1, right  
16 now, 442,000 have been identified. And we believe that a  
17 distribution could be made to them, of the available shares and  
18 warrants.

19           We want this process to continue. We support this  
20 motion. However, we want to be on the record that we do not  
21 believe -- even once we have all that information, contrary to  
22 what Bondholders Communication Group says and the debtor --  
23 that we might have to return to this court, in order to seek  
24 certification and some level of comfort; that, in fact, the  
25 information received is accurate and that which we can rely

1 upon in making a distribution.

2 But otherwise, we support this motion and the  
3 continuing efforts of Bondholders Communication Group and the  
4 debtor. Thank you, Your Honor.

5 THE COURT: Thank you. Would you like to respond, as  
6 to whether or not this mechanism that's in place is going to  
7 get the shares to the right people?

8 MS. DENNISON: Yes, Your Honor. Briefly, number one,  
9 first and foremost, the plan solicitation procedures were set  
10 up to use Depository Trust Company as the distribution agent,  
11 based on the industry standard; that the distribution would be  
12 made to DTC, who would then make the distribution to its  
13 participants. That's another name for master ballot agents.  
14 That procedure is prepared -- is totally available to Law  
15 Debenture, if they want to use that procedure. They simply  
16 need to instruct DTC to issue a certain number of shares to the  
17 master ballot agents. And the master ballot agents have  
18 demonstrated, by complying -- those that have complied, except  
19 for the one -- that they have that information available to  
20 them, in terms of who the Option 1 holders are.

21 So I understand Mr. Snellings' concern about wanting  
22 detail. But the simple way this industry works, bizarre as it  
23 is, distributions are made through DTC to the master ballot  
24 agents. And the master ballot agents have the responsibility  
25 for maintaining the books and records, to know who the holders

1 -- the beneficial holders -- are. That's the way the industry  
2 works. That's the way the plan was designed.

3           Based on Law Debenture's concerns, though, the debtor  
4 has cooperated with them through that process, to get whatever  
5 additional information can be had. That information has been  
6 provided, with the exception of the one master ballot agent, as  
7 to the 8(b) shares.

8           I close, by saying that I think that the information  
9 has been certified a number of times in this Court,  
10 particularly in connection with confirmation. It was certified  
11 in the voting tabulation report. Those documents were properly  
12 filed. There's never been any question. No one has called  
13 into question DTC's ability to perform the service it provides  
14 for not only this debtor, but any other debtor or company  
15 issuing shares through the DTC system.

16           We'd ask for the contempt order. We'd also ask that  
17 we be able to reserve the rights to come back to this Court, to  
18 seek attorney's fees and costs -- as may be appropriate -- once  
19 this process is complete.

20           And then lastly, I would note for the Court that the  
21 debtor distributed our issued instructions to its transfer  
22 agent, LaSalle (phonetic), on December 23rd, to issue the  
23 shares to Law Debenture, as the indenture trustee for the 8(b)  
24 Option 1 QUIP holders. The debtor has done everything that it  
25 can, in the ordinary course. It has complied with the plan.

1 And, you know, we'll continue to coordinate and assist Law  
2 Debenture with however it chooses to make the distribution.  
3 But the debtor believes it's in full compliance.

4 THE COURT: All right. The motion will be granted.

5 MS. DENNISON: Thank you, Your Honor. We will submit  
6 an order, consistent with Mr. Sullivan's affidavit. We now  
7 turn to -- matter Number 15 has been addressed. That's the  
8 Gonzalez settlement. Matter Number 16 is the motion to  
9 determine the allowed amounts of the claims of Skadden Arps,  
10 Kurt Weitzel (phonetic), and Syndet Mobility (phonetic).

11 The debtor filed a notice allowed claim, because the  
12 claim amount matched the amount on the schedules. Magten filed  
13 an objection when the debtor filed a follow-up of its notice of  
14 intent to distribute. The debtor has then filed a motion to  
15 allow these claims, in the amounts reflected in its motion.  
16 And there have been no other objections, other than that of  
17 Magten. And we would ask, at this time, that the order be  
18 entered.

19 THE COURT: Motion will be granted.

20 MS. DENNISON: Thank you, Your Honor. Matter Number  
21 17 is the motion seeking disallowance and expungement of the  
22 claims of a number of individuals. These are individuals, a  
23 number of which are involved in the Montana Power; former  
24 officers and directors. As to those individuals that have  
25 filed an objection, the debtor has requested that that matter

1 be continued. As to the individuals listed here on the agenda  
2 at Matter Number 17, no response was filed in connection with  
3 the debtor's objection and motion to expunge the claims,  
4 because they did not respond to the debtor's objection. So we  
5 would seek an order, at this time, based on the failure of  
6 these individuals to file any responsive pleadings to the  
7 debtor's claim objection; that an order disallowing and  
8 expunging the identified claims be entered.

9 THE COURT: Motion will be granted.

10 MS. DENNISON: Thank you, Your Honor. Matter Number  
11 18 is the motion seeking disallowance and expungements of the  
12 claims of Keith Atler (phonetic), Mary Jepson (phonetic), Abber  
13 Dickle (phonetic) and et al. Again, we have received no  
14 response or -- to the debtor's objection. And we would ask  
15 that the order be entered at this time.

16 THE COURT: Motion will be granted.

17 MS. DENNISON: Thank you, Your Honor. Matter Number  
18 19 is the objection to Claim Number 1087 of the Matsen  
19 (phonetic) plaintiffs. This matter was set to move forward  
20 today. Some negotiations have been active. And the parties  
21 can report that a settlement has been reached, subject to  
22 documentation. We expect to present that to the Plan Committee  
23 and to file the papers shortly. We'd ask that that be  
24 continued to the next omnibus hearing, so that the settlement  
25 can be finalized.



1 THE COURT: All right. The matter will be vacated to  
2 receipt of the settlement documents.

3 MS. DENNISON: Thank you, Your Honor. Matter Number  
4 20 is the objection to Claim Number 62, filed by Parry Finer  
5 Net Technologies (phonetic), Claim Number 193, followed by A&T,  
6 Claim Number 1067, followed by Contrarian and Claim Number  
7 1080, filed by AT&T.

8 At this time, Your Honor, we also can report that the  
9 parties have reached a settlement, that will need to be  
10 documented and circulated, both to the Plan Committee and filed  
11 with the Court. We would ask that this matter be continued to  
12 the next omnibus.

13 THE COURT: This matter will be vacated, pending the  
14 receipt of the settlement documents.

15 MS. DENNISON: Thank you, Your Honor. Matter Number  
16 21 is the objection to Claim Number 1040, of Mineral Management  
17 Service, pursuant to 11 U.S.C. 502(b) and Federal Bankruptcy  
18 Rule of Procedure 2007. At this time, Your Honor, the debtor  
19 would like to proceed. But we understand -- we have made a  
20 settlement proposal to the Mineral Management Service, and are  
21 still waiting on a response. And I think Mr. Troy is in the  
22 courtroom, and can speak to that, as well.

23 THE COURT: Counsel for Mineral Management?

24 MR. TROY: Good morning, Your Honor. Thank you.  
25 Matthew Troy, Department of Justice, on behalf of the Minerals



1 Management Service. Your Honor, last week, I believe -- I  
2 believe it was last week -- the debtor's communicated a  
3 counteroffer to a settlement offer that MMS had made. And I  
4 have that offer. Unfortunately, agency counsel is on vacation  
5 this week, will be back Monday, at which point I intend to  
6 discuss it with her. So I would ask for a continuance, to  
7 permit the parties to further explore settlement.

8 THE COURT: Well, what's the prospect of the  
9 settlement being accepted? I'm not going to continue it, if  
10 there's no -- just to have it come back and say, well, we  
11 didn't get it made.

12 MR. TROY: Your Honor, I can't say for certain, other  
13 than that I can tell you that the debtor started with the  
14 belief that the claim was worth zero. And it has made an offer  
15 well in excess of that -- much closer to what MMS thinks it's  
16 worth, as asserted in the proof of claim.

17 MS. DENNISON: Your Honor, the debtor would say that  
18 this is a 30 day roll, at most. We either need to try it or  
19 get it done. We made a good faith settlement proposal.  
20 There's been a counter once. And I think that if we can't wrap  
21 it up, it should be set for a contested hearing at the next  
22 omnibus.

23 THE COURT: I'll give the parties 20 days to submit  
24 the settlement documents. Is that all right, counsel?

25 MR. TROY: That's fine, Your Honor. And just to

1 clarify the record, Your Honor, I think there's some confusion  
2 on how the settlement offer progressed here. An objection was  
3 made. MMS filed a response. The debtors asked for a  
4 settlement offer from MMS as an accommodation, and we made that  
5 accommodation. And it took -- with all due respect to the  
6 debtors and Ms. Dennison -- a month, two months, for the  
7 debtors to respond to that just this past week. And frankly --

8 THE COURT: Just -- all right. I'm just trying to  
9 get this case closed.

10 MR. TROY: I understand, Your Honor. But I just want  
11 to make clear that if there's any delay here, it's not been at  
12 the seat of MMS.

13 THE COURT: All right. 20 days should be enough to  
14 make up your mind. It's not that big a claim.

15 MR. TROY: Understood, Your Honor.

16 THE COURT: Thank you, very much.

17 MR. TROY: Thank you.

18 THE COURT: We will vacate the hearing, pending  
19 receipt of the settlement documents, if any.

20 MS. DENNISON: And --

21 THE COURT: Item 22 has been vacated.

22 MS. DENNISON: That's correct, Your Honor. Item  
23 Number 23 is the 15 omnibus objection to certain employment  
24 related claims. There are three parties that this matter is  
25 going forward to; Linda Lindeman (phonetic), Michael Young, and

1 Patrick Coleman. As to the Lindeman claim, a settlement has  
2 been reached. And we'd like to provide a stipulation of  
3 settlement in that claim. The Plan Committee has reviewed it.  
4 And -- I lost my notes.

5 The settlement amount, Your Honor, is \$45,000. And  
6 the background on the claim is it arises out of a claim for the  
7 reimbursement of medical expenses. There was a legitimate  
8 dispute, as between the debtor and the claimant. And the  
9 45,000 is a reasonable number, in light of the facts, as pled  
10 in the complaint. So we'd like to submit the stipulation, with  
11 an order to follow, based on the claim being allowed at 45,000,  
12 which is a reduction over the initial claim filed.

13 THE COURT: Very well. You may proceed with the  
14 settlement.

15 MS. DENNISON: Thank you, Your Honor. The next item  
16 is Michael Young. The parties have reached a settlement, as to  
17 the monetary amount of the allowed claim. There is a dispute  
18 over the form of order to be submitted. A counterproposal was  
19 received late last night. And the debtor is going to need some  
20 period of time to evaluate the counterproposal. What we would  
21 suggest -- and if we do not have an agreed order by the end of  
22 this week -- that this matter be set for a hearing at the next  
23 omnibus hearing.

24 THE COURT: Well, how close are you? Because I --

25 MS. DENNISON: How close are we, Your Honor?

1 THE COURT: I'm --

2 MS. DENNISON: We have resolved the allowed amount of  
3 the claim. There is a request for language in the order, that  
4 the debtor cannot accept at this point. I would think that  
5 with further discussion, we should be able to reach acceptable  
6 language to both parties, and submit an order on certification.  
7 If that cannot be accomplished -- and I am talking about an  
8 extremely short term -- by the end of this week, then we will  
9 need to proceed with a contested hearing on this claim.

10 THE COURT: All right. I'll grant the parties seven  
11 days in which to file the settlement documents.

12 MS. DENNISON: Thank you, Your Honor. The next  
13 matter is the matter of Patrick Coleman.

14 THE COURT: Mr. Coleman, are you still there?

15 MR. COLEMAN: Yes, sir -- Your Honor.

16 MS. DENNISON: The debtor is happy to proceed with  
17 the claim objection, Your Honor, recognizing this is, of  
18 course, a claimant. I'm happy to defer the Court, in terms of  
19 how the Court might like to proceed.

20 THE COURT: Do you have a witness?

21 MS. DENNISON: I do, Your Honor.

22 THE COURT: Call your witness.

23 MS. DENNISON: Thank you, Your Honor. We call Roger  
24 Shrum to the stand.

25 THE COURT: Raise your right hand, sir.

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1 ROGER SHRUM, DEBTOR'S WITNESS, SWORN

2 THE COURT: State your name and address and your  
3 business or profession or occupation.

4 THE WITNESS: My name is Roger Shrum. I am vice  
5 president of Human Resources and Communications for  
6 NorthWestern Corporation in Sioux Falls, South Dakota.

7 DIRECT EXAMINATION

8 BY MS. DENNISON:

9 Q Mr. Shrum, can you give us a brief overview of what your  
10 job involves?

11 A Yes. I took my current position in December of 2003, and  
12 currently responsible for the company's human resources  
13 activities, as well as investor relations and communications.

14 Q Okay. And would that include familiarity with the former  
15 employees file?

16 A Yes, it would.

17 Q And in connection with today's hearing, have you reviewed  
18 Mr. Coleman's file?

19 A Yes, I have.

20 Q And have you reviewed all the other books and records  
21 available to you, about the employment of Mr. Coleman?

22 A Yes, I have.

23 Q I want -- Your Honor, I'd like to approach the witness, to  
24 hand up Exhibit Number 1, which is Mr. Coleman's proof of  
25 claim. May I approach?

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1 THE COURT: You may.

2 MS. DENNISON: Thank you, Your Honor.

3 Q Mr. Shrum, are you familiar with Exhibit Number 1?

4 A Yes, I am.

5 Q And what is it?

6 A It is a proof of claim, from Patrick Coleman. Do you want  
7 me to state the amount?

8 Q Yes, please.

9 A For the amount of \$4,088,473, plus Schedule A, which is an  
10 additional \$56,846 for relocation expenses.

11 Q Okay. And you reviewed -- you have reviewed this claim,  
12 correct?

13 A Yes, I have.

14 Q And are you aware that NorthWestern filed an objection to  
15 Mr. Coleman's claims, based on books and records?

16 A Yes, I have -- yes, I know.

17 Q And in NorthWestern's books and records or any files  
18 available to NorthWestern, did you find anything to support Mr.  
19 Coleman's claims?

20 A No, I did not.

21 Q Okay. I will talk about the specifics of the claim in  
22 just a second.

23 MS. DENNISON: Your Honor, I'd like to mark, as  
24 Exhibit Number 2, claimant Patrick Coleman's response to the  
25 objection over the note.

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1 THE COURT: Exhibit 2. Exhibit 1 is admitted.

2 Exhibit 2 is the response?

3 MS. DENNISON: Yes, Your Honor.

4 THE COURT: Exhibit 2 is admitted.

5 MS. DENNISON: Thank you, Your Honor.

6 Q Mr. Shrum, have you reviewed Patrick Coleman's response to  
7 the objections of the debtor?

8 A Yes, I have.

9 Q Okay. What -- if we were to break Mr. Coleman's claim  
10 down into two component parts, what would those parts be?

11 A Essentially, there are two specific request for claim.  
12 One is for his incentive compensation plan, that was  
13 established. And then secondly, is for relocation expenses.

14 Q Okay. Mr. Coleman, I believe, was employed by  
15 NorthWestern in 2002, is that correct?

16 A That is correct.

17 Q Did he have an employment -- did you find, when you  
18 searched the books and records, any employment contract?

19 A No, I did not.

20 Q What did you find for Mr. Coleman?

21 A I found an employment letter agreement -- not stipulating  
22 -- but outlining the hiring of Mr. Coleman.

23 Q If you look at Exhibit Number 2, which is Mr. Coleman's  
24 response to the debtor's objection, can you find a copy of that  
25 letter?

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1 THE COURT: State the date of that letter.

2 MS. DENNISON: Thank you, Your Honor. It's February  
3 5th, 2002. And it's about five pages into --

4 THE COURT: All right.

5 MS. DENNISON: -- Mr. Coleman's exhibit.

6 A I found that letter.

7 Q Okay. Was that letter also in the request for his books  
8 and records?

9 A Yes, it is.

10 Q Okay. And is this the offer letter that you refer to?

11 A Yes, it is.

12 Q Can you tell me what position Mr. Coleman was offered in  
13 February of 2002?

14 A Chief Procurement Officer.

15 Q And what does a Chief Procurement Officer do?

16 A It is my understanding that the Chief Procurement Officer  
17 was essentially responsible for our purchasing activities for  
18 the corporation at that time.

19 Q Okay. And how did Mr. Coleman's employment at  
20 NorthWestern end?

21 A He was severed from the company, as part of a  
22 reorganization, in 2003 -- early 2003.

23 Q Would that be a reduction in force?

24 A Yes, it was.

25 Q Were the other members of his department also severed at



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1 that time?

2 A Yes, they were.

3 Q Okay. And basically, the department was pretty much  
4 eliminated?

5 A That is correct.

6 Q Is -- do you -- if you know, do you know whether South  
7 Dakota is an at will employment state?

8 A Yes, it is.

9 Q Thank you. So the search in the records established this  
10 offer letter, correct?

11 A That is correct.

12 Q And based on your books and records, you were also able to  
13 establish that Mr. Coleman accepted and was basically employed,  
14 for a period of time?

15 A That is correct.

16 Q And did you review Mr. Coleman's payroll records?

17 A Yes, I did.

18 Q And what did those payroll records show?

19 A It showed that he was paid for the period of time in which  
20 he worked for the company, normal wages and other  
21 reimbursements.

22 Q So that would be consistent with the terms of the offer  
23 letter?

24 A That is correct.

25 Q What did you find, in connection with the reimbursement of

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1 moving expenses?

2 A There was some reimbursement of relocation expenses. I  
3 don't have the specific amounts in front of me, but there was  
4 some relocation expenses that were provided for Mr. Coleman.

5 Q Do you recall the category?

6 A I believe that they were for temporary living expenses.

7 Q Okay. Did you find any evidence of any reimbursement for  
8 any other category of relocation expenses?

9 A I do not believe I remember any of that.

10 Q Did you find any requests in Mr. Coleman's file or in the  
11 accounting records for reimbursement of specific moving  
12 expenses?

13 A No. I did not find anything. And I would also just point  
14 out that on his offer letter, he was given a nine month period  
15 of time to provide those to the company.

16 Q So during that period of time and after your search of  
17 the records at NorthWestern, you found no requests for  
18 reimbursement of living expenses?

19 A That is correct.

20 Q Were you surprised to see a request in his claim for the  
21 reimbursement of living -- or of relocation expenses?

22 A Yes, I was.

23 Q Okay. I'd ask you to turn back to the claim, which is  
24 Exhibit Number 1. I'd like to take a look at those expenses --

25 A Okay.

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1 Q -- that have been requested.

2 A Yes.

3 Q If you look at the first item, it's realtor commissions.  
4 What is the policy your -- at the time Mr. Coleman was, you  
5 know, offered this position -- and what was the position at  
6 NorthWestern on realtor commissions?

7 A It was the normal policy of the company to pay for  
8 commissions for the sale and purchase of home.

9 Q And you -- and just consistent with your prior testimony  
10 -- you never received or there's no document in the file that  
11 shows a specific request for reimbursement of the commission?

12 A We did not have such a documentation.

13 Q Same question about loss of sale.

14 A Again, it is not common for the company to pay for loss of  
15 sale of a home.

16 Q And again, there was no documentation on loss of sale,  
17 correct?

18 A There were no documents supporting that.

19 Q Thank you. With regard to moving expenses of 1,400?

20 A We had no records of such a request.

21 Q Okay. But had that -- you had the records -- that would  
22 have been consistent with the terms of his offer letter?

23 A That would have been consistent, in terms of payment, yes.

24 Q Okay. With regard to mortgage expenses of 22,066, is it  
25 -- or what is the company's position or policy on mortgage

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1 expense?

2 A Again, not quite understanding specifically what is meant  
3 here by mortgage expense. But the company does not normally  
4 cover such expense, related to mortgages.

5 Q And consistent with the other inquiries, did you not find  
6 any records at NorthWestern, identifying -- in your request for  
7 reimbursement -- that would fall under this category?

8 A I found no such records.

9 Q Thank you. With regard to miscellaneous expenses of  
10 1,240?

11 A There is a normal requirement for payment of certain  
12 miscellaneous expenses, up to a certain cap. And I believe, in  
13 looking through the books and records that we had on file --  
14 with regards to Mr. Coleman's relocation -- there was a small  
15 miscellaneous expense payment, but it had no other records  
16 showing this miscellaneous expense request.

17 Q Had Mr. Coleman submitted, within the nine month period,  
18 documentation to support expenses, would they have been -- was  
19 it NorthWestern's practice to reimburse?

20 A We would have reimbursed all eligible expenses, that's  
21 correct.

22 Q Mr. Shrum, are you familiar with the settlement proposal  
23 made to Mr. Coleman?

24 A Yes, I am.

25 Q And can -- and what was that settlement proposal?

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1 A The settlement proposal was for \$15,000 allowed claim, to  
2 essentially deal with the relocation expenses that we believe  
3 might have been covered, if he would have provided those with  
4 those records.

5 Q And that was a best guess number, wasn't it, since you had  
6 their documentation?

7 A That is correct.

8 Q Okay. Let's turn now to the second component of Mr.  
9 Coleman's claim. Can you describe for the Court what you  
10 understand that claim component to be?

11 A It is my understanding that the claim component is in  
12 regard to a performance bonus plan that was established within  
13 his offer letter, with regards to annual procurement savings of  
14 the company.

15 Q Now, was that bonus plan something that anybody else  
16 participated in?

17 A I'm unable to -- I have not been able to find anyone else  
18 within the company that had such an arrangement.

19 Q So it appears to be a runoff plan for Mr. Coleman?

20 A That is my belief, yes.

21 Q Did you find any documentation in the company's books and  
22 records, in terms of the calculation about whether any bonus  
23 payment might have been owed to Mr. Coleman?

24 A I can find no specific information related directly to Mr.  
25 Coleman, in establishing whether or not he was to receive any

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1 bonus payment regarding this annual savings plan.

2 Q So in his employee file, there is no calculation, showing  
3 the determination of any amount being owed under the proposed  
4 bonus plan?

5 A I can find nothing within our books and records.

6 Q Okay. If you were to hypothetically assume that a  
7 calculation were run, based on the terms in Mr. Coleman's offer  
8 letter, can you describe for the Court how you would prepare  
9 such a calculation?

10 A Essentially, what I would do is take calculations  
11 established by both internal and third party evaluation of  
12 potential savings, and then review those analysis, based upon  
13 the annual performance bonus plan that is targeted here. I  
14 would point out that the plan not only is a result of savings,  
15 but it's a quantification of actual savings, not speculated  
16 savings or future savings. It is also contingent upon netting  
17 out external resource costs and internal procurement department  
18 costs. That's including compensation and benefits for Mr.  
19 Coleman and his staff. And again, I would net those two  
20 numbers against each other, to determine whether or not Mr.  
21 Coleman was allowed any performance bonus under this plan.

22 Q Okay. Let's get to the conclusion first. Based on your  
23 analysis, is Mr. Coleman entitled to any bonus, set forth on  
24 the formula in his offer letter?

25 A No, he is not.

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1 Q Okay. Let me ask you. You mentioned a third party  
2 analysis. Can you tell the Court what that third party  
3 analysis is?

4 A With the procurement group at that time, a third party  
5 organization, called Behring Point (phonetic), was heavily  
6 engaged in the process of this program, which was called  
7 operational excellence. They were there to assist, but also,  
8 to help quantify any potential savings. And so, we would  
9 utilize that third party analysis, as well as internal analysis  
10 that was conducted by Mr. Coleman's group.

11 Q Did Behring Point issue a written report?

12 A Yes, they did.

13 MS. DENNISON: Your Honor, I'd like to approach the  
14 witness and hand him what -- Exhibit Number 3.

15 THE COURT: All right.

16 MS. DENNISON: This is a document entitled;  
17 "NorthWestern Corporation's Strategic Sourcing Program Review,"  
18 prepared by Behring Point, dated June 17th, 2003.

19 MR. COLEMAN: I have a question.

20 THE COURT: I'll get -- you'll get to ask him  
21 questions, as soon as he's completed, Mr. Coleman.

22 MR. COLEMAN: I just wanted to know if I could  
23 (inaudible).

24 THE COURT: You may proceed.

25 Q Mr. Shrum, can you identify for the Court Exhibit Number

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1 3?

2 A Yes. It's a report by Behring Point. It's dated --  
3 "NorthWestern Corporation's Strategic Source and Program  
4 Review." And it's dated June 17th, 2003.

5 Q And is this the report you referred to, in connection with  
6 the third party information used to calculate or test whether  
7 there was a bonus due to Mr. Coleman?

8 A Yes, it is.

9 Q Okay. Can you explain for the Court how you used this  
10 report in your analysis?

11 A One of the things that we -- the company -- had asked  
12 Behring Point to do was to look at the records that were  
13 established within the procurement group, as well as Behring  
14 Point, themselves, to quantify both the hard dollar or contract  
15 dollars that were potential -- were savings within the company  
16 in 2002 -- versus soft dollars or consumption savings. That  
17 was established as part of the annual -- the quarterly and  
18 annual review. And specifically, what we wanted to establish  
19 was to find out what the actual savings were in 2002, versus  
20 projected savings, because of consumption of such things as  
21 airline travel or speculated savings.

22 Q If -- is it fair to characterize the Behring Point report,  
23 which is Exhibit Number 3, as a report that tested out certain  
24 cost saving initiatives?

25 A Yes. I would agree with that.



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1 Q Okay. And why wouldn't soft cost reduction be included?

2 A Well, I think a good example would be in the area of  
3 travel. Even though there were arrangements made to work to  
4 reduce travel expenses for airlines, rental cars, hotels, to  
5 get better savings for those type of things, the reason why  
6 they're considered soft dollars, because if there was a  
7 reduction in travel -- for instance, if the business changed or  
8 if a restriction was put in place on travel -- those shouldn't  
9 be considered actual savings as a result of this plan, because  
10 that was a result of the actual business at that time.

11 And a good example would have been with Expanets,  
12 which was the largest travel group of the organization at the  
13 time. And the consumption savings that was expected in 2002  
14 was based on a projection of 2001 travel habits. But in 2002,  
15 significant travel was reduced over that period of time. So  
16 they weren't real savings, as a result of their programs that  
17 were put in place. It was savings, as a result of elimination  
18 of jobs and changes of business practices.

19 Q So it's -- those savings, based on Expanets travel -- had  
20 nothing to do with the procurement department?

21 A No. There was nothing to do with that, because they had  
22 no involvement in the reduction of headcount that occurred at  
23 Expanets or the -- essentially, the elimination of business  
24 travel.

25 Q Just to put it in perspective, what was the reduction in